

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

REGINALD MILON FIELDS, } Case No. CV 15-03943-DDP (KK)
Plaintiff, }
v. } ORDER DISMISSING SECOND
JIM MCDONNEL, et al., } AMENDED COMPLAINT WITH
Defendants. } LEAVE TO AMEND

Plaintiff Reginald Milon Fields (“Plaintiff”), an inmate proceeding pro se, has filed a Second Amended Complaint (“SAC”) in his civil rights action pursuant to 42 U.S.C. § 1983. ECF Docket No. (“Dkt.”) 24, SAC. The SAC sues defendants C.A. Hinton, Doctor Hanisper, Municipality, County of Los Angeles, and Deputies Rabadi, Wong, Portilla, and Parra, alleging they violated Plaintiff’s constitutional rights by impeding his medical treatment and mishandling his mail. *Id.* Based upon the reasons set forth below, the Court dismisses the SAC with leave to amend.

I.

BACKGROUND

3 On March 16, 2015, Plaintiff, an inmate at North County Correctional
4 Facility, constructively filed¹ a civil rights complaint pursuant to 42 U.S.C. § 1983
5 (“Complaint”). Compl. The Complaint named defendants Sheriff Jim McDonnel,
6 C.A. Hinton, Deputy Portilla, and Deputy Parra, and alleged they violated
7 Plaintiff’s constitutional rights by reading his legal mail. Id. On June 1, 2015, the
8 Court issued an Order dismissing the Complaint with leave to amend for failure to
9 state a claim. Dkt. 3, Order Dismissing Compl. Leave Am. The Court’s Order
10 granted Plaintiff leave to cure the Complaint’s deficiencies and amend only with
11 respect to the claims raised in the Complaint by filing a First Amended Complaint
12 (“FAC”). Id. at 6.

13 On September 20, 2015, Plaintiff constructively filed a FAC. Dkt. 19, FAC.
14 The FAC named defendants Deputy Rabadi, Deputy Wong, Doctor Hanisper,
15 Municipality of Los Angeles, County of Los Angeles, C.A. Hinton, Deputy
16 Portilla, and Deputy Parra, and alleged they violated Plaintiff's constitutional
17 rights by: (1) impeding Plaintiff's medical treatment for a staph infection; and (2)
18 reading and interfering with Plaintiff's legal mail. *Id.* On October 7, 2015, the
19 Court issued an Order dismissing the FAC with leave to amend for failure to state a
20 claim. Dkt. 20, Order Dismissing FAC Leave Am. The Court's Order granted
21 Plaintiff leave to cure the FAC's deficiencies and amend only with respect to the

¹ Under the “mailbox rule,” when a pro se inmate gives prison authorities a pleading to mail to court, the court deems the pleading constructively “filed” on the date it is signed. Roberts v. Marshall, 627 F.3d 768, 770 n.1 (9th Cir. 2010) (citation omitted); Douglas v. Noelle, 567 F.3d 1103, 1107 (9th Cir. 2009) (stating the “mailbox rule applies to § 1983 suits filed by pro se prisoners”). Here, Plaintiff signed and dated the Complaint on March 16, 2015. See Dkt. 1, Compl. Thus, the Court deems March 16, 2015 the filing date.

1 claims raised in the Complaint by filing a SAC (“SAC”). Id. at 13. Specifically,
 2 the Court stated “Plaintiff shall not include new defendants or new allegations that
 3 are not reasonably related to the claims asserted in the Complaint.” Id.

4 On October 27, 2015, Plaintiff constructively filed the instant SAC against
 5 defendants Deputy Rabadi, Deputy Wong, Doctor Hanisper, Municipality, County
 6 of Los Angeles (“County”), C.A. Hinton, Deputy Portilla, and Deputy Parra
 7 (“Defendants”). Dkt. 24, SAC. Plaintiff sues Municipality and County in their
 8 official capacities, and the remaining defendants in their individual capacities. Id.
 9 at 4-6. The SAC makes nine claims (“Claims One through Nine”) arising from
 10 allegations Defendants: (1) impeded medical treatment of Plaintiff’s staph
 11 infection; and (2) mishandled Plaintiff’s mail.

12 **II.**

13 **PLAINTIFF’S ALLEGATIONS IN THE SAC**

14 Claims One through Five allege defendants Rabadi, Wong, Hanisper,
 15 Municipality, and County impeded the treatment of Plaintiff’s staph infection.
 16 SAC 7-24.² Claims Six through Nine allege defendants Hinton, Portilla, Parra, and
 17 County mishandled Plaintiff’s mail. Id. at 24-31.

18 **A. CLAIM ONE**

19 In Claim One, Plaintiff alleges on June 6, 2013, signs posted at North
 20 County Correctional Facility informed inmates and prison officials about staph
 21 infections “with pictures of different kinds of staph skin infections in their different
 22 stages. The[] signs . . . notifie[d] inmates if they have any of these symptoms to
 23 notify the deputy immediately.” Id. at 7, 9. Plaintiff alleges he requested medical
 24 treatment for his staph infection, but defendant Rabadi denied him access to
 25 medical care and “threatened to send Plaintiff to the hole.” Id. at 21.

26
 27 ² The Court refers to the pages of the SAC as if they were consecutively
 28 paginated.

1 **B. CLAIM TWO**

2 In Claim Two, Plaintiff alleges “[o]n or about sometime in July 2013,” he
 3 asked defendant Wong for medical care for his staph infection. Id. at 12. Plaintiff
 4 alleges defendant Wong asked for Plaintiff’s age, instructed him to pack his
 5 personal belongings, and escorted him to “the old man dorm instead of the
 6 hospital.” Id. at 13. Plaintiff further alleges defendant Wong “tricked Plaintiff
 7 acting as if she was trying to help Plaintiff but in actuality harm[ed] Plaintiff.” Id.
 8 at 14.

9 **C. CLAIM THREE**

10 In Claim Three, Plaintiff alleges “[o]n or about June 22, 2013” defendant
 11 Hanisper examined his staph infection and prescribed him fifteen days of
 12 antibiotics. Id. at 15-16. Plaintiff alleges after fifteen days of antibiotics,
 13 defendant Hanisper examined him again and discharged him, although “[a]ny
 14 ordinary doctor would have known that Plaintiff still depicted symptoms/infected
 15 because he was still swollen and in pain.” Id. at 17. Plaintiff further alleges
 16 defendant “Hanisper knew Plaintiff also had something wrong with his liver as the
 17 doctors at Olive View diagnosed Plaintiff with a life threatening infection” and
 18 Plaintiff’s premature discharge caused him to have “E. Coli as well.” Id. at 18.

19 **D. CLAIM FOUR**

20 In Claim Four, Plaintiff alleges defendant “Municipality implemented a
 21 policy concerning a[n] infectious disease, hung that policy upon the walls of the
 22 jail building, but failed to train and supervise their own employees the measures to
 23 be taken concerning that policy.” Id. at 21.

24 **E. CLAIM FIVE**

25 In Claim Five, Plaintiff alleges defendant County:

26 has not trained these employees in health care issues involving the
 27 cleanliness of the jail. This is where all of my medical mishaps have
 28 came from. The jail is filthy mold and mildew in the shower. No

1 cleaning materials sufficient to clean with but disinfectant diluted with
 2 water. That has to be bought from the trustees for a price.

3 Id. at 23.

4 **F. CLAIM SIX**

5 In Claim Six, Plaintiff alleges on October 16, 2014, defendant Hinton gave
 6 Plaintiff “letters the Courts mailed on September 8, 18, 2014.” Id. at 25. Each
 7 letter allegedly stated Plaintiff’s failure to respond within ten days of their date
 8 would cause dismissal of “his complaint/claim,” and Plaintiff’s delayed receipt of
 9 the letters allegedly caused his cases to be dismissed. Id. Plaintiff alleges “the
 10 second letter the court sent had been deliberately withheld from Plaintiff by
 11 [defendant] Hinton . . . personally.” Id. Plaintiff also alleges defendant Hinton
 12 lied about when Plaintiff could “X-erox the letter and sign the date [Plaintiff]
 13 received the letter.” Id. at 25-26. Plaintiff further alleges “[o]n or about October
 14 20, 2015, Plaintiff wrote a complaint concerning [defendant] Hinton with[h]olding
 15 his mail causing Plaintiff to default with the Courts. There was never a response
 16 given to the complaint.” Id. at 26.

17 **G. CLAIM SEVEN**

18 In Claim Seven, Plaintiff alleges on September 9, 2014, “Plaintiff presented
 19 a Confidential Correspondence Legal mail letter to [defendant] Portilla to sign, put
 20 his number, and date.” Id. at 27. Plaintiff alleges defendant Portilla read the letter
 21 “word for word like reading a novel.” Id. Plaintiff also alleges he told defendant
 22 Portilla, “You are not suppose[d] to be reading my confidential legal mail to the
 23 courts!” Id. Plaintiff alleges defendant Portilla responded by saying “Well, if I
 24 cannot read it[,] I am not going to sign it,” “threatening Plaintiff,” and “[h]indering
 25 Plaintiff’s communication with the court.” Id. at 27-28.

26 **H. CLAIM EIGHT**

27 In Claim Eight, Plaintiff alleges “on or about September 11, 2014,” he asked
 28 defendant Parra to “sign his outgoing Confidential Correspondence,” which was a

1 letter to a court. Id. at 28. Plaintiff alleges defendant Parra “took the letter out of
 2 the envelope [and] immediately began to start reading the letter,” over Plaintiff’s
 3 protests. Id. at 29. Plaintiff further alleges defendant Parra looked “at Plaintiff
 4 with a kind of smile/smirk on her face,” and “did what she wanted to do in
 5 inspecting [his] mail depriving Plaintiff the opportunity to communicate with the
 6 Courts timely.” Id. at 29-30.

7 **I. CLAIM NINE**

8 In Claim Nine, Plaintiff alleges defendant County “ha[s] not trained their
 9 employees deputies, C.A. assistants, as to the proper procedures when checking
 10 outgoing mail.” Id. at 30. Plaintiff alleges defendant Parra’s statement that she
 11 had to read his legal mail to ensure Plaintiff complied with rules shows “she has
 12 not been trained in the procedures or willingly do[es] not want to follow those
 13 established procedures.” Id. 30-31.

14 **III.**

15 **STANDARD OF REVIEW**

16 Pursuant to Federal Rule of Civil Procedure 12(b)(6), a court may dismiss a
 17 complaint for failure to state a claim upon which relief can be granted. Fed. R.
 18 Civ. P. 12(b)(6). The Ninth Circuit has held “[a] trial court may dismiss a claim
 19 sua sponte under Fed. R. Civ. P. 12(b)(6)” and has also stated “[s]uch a dismissal
 20 may be made without notice where the claimant cannot possibly win relief.” Omar
 21 v. Sea-Land Service, Inc., 813 F.2d 986, 991 (9th Cir. 1987) (citing Wong v. Bell,
 22 642 F.2d 359, 361-62 (9th Cir. 1981)).

23 A complaint may be dismissed for failure to state a claim “where there is no
 24 cognizable legal theory or an absence of sufficient facts alleged to support a
 25 cognizable legal theory.” Zamani v. Carnes, 491 F.3d 990, 996 (9th Cir. 2007)
 26 (citation and internal quotation marks omitted). In considering whether a
 27 complaint states a claim, a court must accept as true all of the material factual
 28 allegations in it. Hamilton v. Brown, 630 F.3d 889, 892-93 (9th Cir. 2011).

1 However, the court need not accept as true “allegations that are merely conclusory,
 2 unwarranted deductions of fact, or unreasonable inferences.” In re Gilead Scis.
 3 Sec. Litig., 536 F.3d 1049, 1055 (9th Cir. 2008) (citation and internal quotation
 4 marks omitted). Although a complaint need not include detailed factual
 5 allegations, it “must contain sufficient factual matter, accepted as true, to state a
 6 claim to relief that is plausible on its face.” Cook v. Brewer, 637 F.3d 1002, 1004
 7 (9th Cir. 2011) (citation and internal quotation marks omitted). A claim is facially
 8 plausible when it “allows the court to draw the reasonable inference that the
 9 defendant is liable for the misconduct alleged.” Id. (citation and internal quotation
 10 marks omitted). The complaint “must contain sufficient allegations of underlying
 11 facts to give fair notice and to enable the opposing party to defend itself
 12 effectively.” Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011).

13 “A document filed pro se is to be liberally construed, and a pro se complaint,
 14 however inartfully pleaded, must be held to less stringent standards than formal
 15 pleadings drafted by lawyers.” Erickson v. Pardus, 551 U.S. 89, 94, 127 S. Ct.
 16 2197, 167 L. Ed. 2d 1081 (2007) (citations and internal quotation marks omitted);
 17 Woods v. Carey, 525 F.3d 886, 889-90 (9th Cir. 2008).

18 If the court finds a complaint should be dismissed for failure to state a claim,
 19 the court has discretion to dismiss with or without leave to amend. Lopez v. Smith,
 20 203 F.3d 1122, 1126-30 (9th Cir. 2000). Leave to amend should be granted if it
 21 appears possible the defects in the complaint could be corrected, especially if the
 22 plaintiff is pro se. Id. at 1130-31; see also Cato v. United States, 70 F.3d 1103,
 23 1106 (9th Cir. 1995). However, if, after careful consideration, it is clear a
 24 complaint cannot be cured by amendment, the court may dismiss without leave to
 25 amend. Cato, 70 F.3d at 1107-11; see also Moss v. U.S. Secret Serv., 572 F.3d
 26 962, 972 (9th Cir. 2009).

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IV.

DISCUSSION

A. PLAINTIFF MISJOINS CLAIMS ONE THROUGH FIVE AGAINST DEFENDANTS RABADI, WONG, HANISPER, MUNICIPALITY, AND COUNTY

If a court issues an order granting a plaintiff leave to amend, the plaintiff's failure to comply with the court's order may warrant dismissal. Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir. 1992). In addition, under Federal Rule of Civil Procedure 20, a plaintiff may join defendants in a single complaint if: (1) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (2) any question of law or fact common to all defendants will arise in the action. Fed. R. Civ. P. 20(a)(2). Misjoinder occurs where the facts giving rise to claims lack "similarity in the factual background." Coughlin v. Rogers, 130 F.3d 1348, 1350 (9th Cir. 1997); see Talib v. Nicholas, 2015 WL 456546, at *9 (C.D. Cal. Feb. 2, 2015) ("General allegations are not sufficient to constitute similarity when the specifics are different.").

18 Here, Plaintiff’s SAC misjoins Claims One through Five. Plaintiff’s original
19 Complaint alleged defendants interfered with his mail. Compl. 15-16. The Court’s
20 June 1, 2015 Order granted Plaintiff leave to cure the Complaint’s deficiencies and
21 amend only with respect to the claims raised in the Complaint. Order Dismissing
22 Compl. Leave Am. 6. Despite this Order, Plaintiff filed a FAC which attempted to
23 present new claims wholly unrelated to the claims presented in the Complaint. See
24 FAC. Thus, in dismissing the FAC, the Court again ordered, “Plaintiff shall not
25 include new defendants or new allegations that are not reasonably related to the
26 claims asserted in the Complaint.” Order Dismissing FAC Leave Am. 13.

27 Plaintiff's SAC once again attempts to join new claims that are wholly
28 unrelated to his original claims. SAC 7-24. Specifically, Claims One through Five

1 against defendants Rabadi, Wong, Hanisper, Municipality, and County arise from
 2 their alleged interferences with Plaintiff's staph infection treatment, and bear no
 3 relation to the alleged mail mishandling that comprises Plaintiff's original claims.
 4 See id.; Coughlin, 130 F.3d at 1350. Claims One through Five against defendants
 5 Rabadi, Wong, Hanisper, Municipality, and County must therefore be dismissed.
 6 Ferdik, 963 F.2d at 1260; Fed. R. Civ. P. 20(a)(2).

7 The Court again advises if Plaintiff wishes to continue to seek relief for his
 8 claims against defendants Rabadi, Wong, Hanisper, Municipality, and County
 9 arising out of alleged interferences with his staph infection treatment, he must file a
 10 separate action. See Coughlin, 130 F.3d at 1350.

11 **B. CLAIM SIX FAILS TO STATE FIRST AND FOURTEENTH
 12 AMENDMENT ACCESS TO THE COURTS CLAIMS AGAINST
 13 DEFENDANT HINTON**

14 The First and Fourteenth Amendments provide the right to access the courts,
 15 which means inmates must be able to litigate claims challenging the conditions of
 16 their confinement without active interference by prison officials. Silva v. Di
 17 Vittorio, 658 F.3d 1090, 1103 (9th Cir. 2011). To state a claim against prison
 18 officials for denial of access to the courts during a plaintiff inmate's pending civil
 19 litigation, the plaintiff must allege the prison officials acted "in order to hinder his
 20 ability to litigate his pending civil lawsuits." Id. at 1104.

21 In addition, a plaintiff must allege an actual injury, i.e., that some official
 22 action has frustrated or is impeding the plaintiff's attempt to bring a nonfrivolous
 23 legal claim. Nevada Dept. of Corrections v. Greene, 648 F.3d 1014, 1018 (9th Cir.
 24 2011). Specifically, a plaintiff must describe: (1) a nonfrivolous underlying claim
 25 that was allegedly compromised "to show that the 'arguable' nature of the claim is
 26 more than hope;" (2) the official acts that frustrated the litigation of that underlying
 27 claim; and (3) a "remedy available under the access claim and presently unique to
 28 it" that could not be awarded by bringing a separate action on an existing claim.

1 Christopher v. Harbury, 536 U.S. 403, 416, 122 S.Ct. 2179, 153 L.Ed.2d 413
 2 (2002). A missed filing deadline, by itself, does not state an access to the courts
 3 claim. See Flagg v. City of Detroit, 715 F.3d 165, 178-79 (6th Cir. 2013) (plaintiff
 4 is not required to prove government obstruction caused him to lose underlying
 5 claim, but must show that the claim was at least arguably meritorious and not
 6 frivolous); Barbour v. Haley, 471 F.3d 1222, 1226 (11th Cir. 2006) (plaintiff
 7 alleging denial of access to the courts must “identify within his complaint [] a
 8 nonfrivolous, arguable underlying claim”) (internal quotation marks omitted).

9 Here, Claim Six fails to state First and Fourteenth Amendment claims
 10 against defendant Hinton. While Plaintiff alleges defendant Hinton deliberately
 11 withheld Plaintiff’s mail and lied about when Plaintiff could make copies of the
 12 mail and sign off for it, Plaintiff fails to show defendant Hinton acted “in order to
 13 hinder his ability to litigate his pending civil lawsuits.” See Silva, 658 F.3d at
 14 1103-04. Plaintiff also fails to allege defendant Hinton’s actions frustrated or
 15 impeded Plaintiff’s attempt to bring a nonfrivolous legal claim. See Nevada Dept.
 16 of Corrections, 648 F.3d at 1018. Plaintiff fails “to show that the ‘arguable’ nature
 17 of the claim is more than hope.” See Christopher, 536 U.S. at 416. Plaintiff
 18 further fails to show defendant Hinton frustrated the litigation of that underlying
 19 claim and a “remedy available under the access claim and presently unique to it”
 20 that could not be awarded by bringing a separate action on an existing claim. Id.
 21 Plaintiff’s First and Fourteenth Amendment claims against defendant Hinton must
 22 therefore be dismissed.

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27 **C. CLAIMS SEVEN AND EIGHT FAIL TO STATE CLAIMS AGAINST**
 28 **DEFENDANTS PORTILLA AND PARA FOR VIOLATING**

**PLAINTIFF'S RIGHT TO ACCESS THE COURTS UNDER THE
FIRST AND FOURTEENTH AMENDMENTS, AND RIGHT TO
COUNSEL UNDER THE SIXTH AMENDMENT**

As stated in IV.B. of this Order, the First and Fourteenth Amendments provide the right to access the courts. Silva, 658 F.3d at 1103; Nevada Dept. of Corrections, 648 F.3d at 1018; Christopher, 536 U.S. at 416.

In addition, the Sixth Amendment prohibits prison officials from reading correspondence between an inmate and his lawyer. Nordstrom v. Ryan, 762 F.3d 903, 906 (9th Cir. 2014). “This is because it is highly likely that a prisoner would not feel free to confide in his lawyer such things as incriminating or intimate personal information -- as is his Sixth Amendment right to do -- if he knows that the guards are reading his mail.” Id. However, correspondence between an inmate and a court does not constitute “legal mail” implicating Sixth Amendment protections. Id.; Meador v. Pleasant Valley State Prison, 312 F. App’x 954, 955 (9th Cir. 2009) (stating “because the mail at issue appeared to come from the California Court of Appeal, it did not constitute constitutionally protected ‘legal mail’”)).³

Here, Claims Seven and Eight fail to state First and Fourteenth Amendment access to the courts claims against defendants Portilla and Parra. While Plaintiff alleges defendants Portilla and Parra read letters he wrote to courts, Plaintiff fails to allege any facts showing defendants Portilla and Parra read his letters “in order to hinder his ability to litigate his pending civil lawsuits.” See SAC 27-30; Silva, 658 F.3d at 1103-04. Rather, Plaintiff concedes defendants Portilla and Parra read his letters to ensure he complied with certain rules. SAC 27-29. In addition, Plaintiff fails to allege the actions of defendants Portilla and Parra frustrated or

³ The Court may cite unpublished Ninth Circuit opinions issued on or after January 1, 2007. U.S. Ct. App. 9th Cir. Rule 36-3(b); Fed. R.App. P. 32.1(a).

1 impeded Plaintiff's attempt to bring a nonfrivolous legal claim. See Nevada Dept.
 2 of Corrections, 648 F.3d at 1018. Plaintiff fails to show "the 'arguable' nature of
 3 the claim is more than hope," defendants Portilla and Parra frustrated the litigation
 4 of that underlying claim, and a "remedy available under the access claim and
 5 presently unique to it" that could not be awarded by bringing a separate action on
 6 an existing claim. See Christopher, 536 U.S. at 416. Plaintiff's First and
 7 Fourteenth Amendment claims against defendants Portilla and Parra must therefore
 8 be dismissed.

9 In addition, Claims Seven and Eight fail to state Sixth Amendment claims
 10 against defendants Portilla and Parra. Plaintiff alleges defendants Portilla and
 11 Parra caused him to delay mailing letters to courts. SAC 27-30. However,
 12 correspondence to courts, as opposed to Plaintiff's lawyer, fails to constitute legal
 13 mail and thus lacks Sixth Amendment protections. See Nordstrom, 762 F.3d at
 14 906; Meador, 312 F. App'x at 955. Plaintiff's Sixth Amendment claim against
 15 defendants Portilla and Parra must therefore be dismissed.

16 **D. CLAIM NINE FAILS TO STATE A CLAIM AGAINST DEFENDANT
 17 COUNTY FOR FAILURE TO TRAIN**

18 To state a failure to train claim, a plaintiff must show: (1) he was deprived of
 19 a constitutional right; (2) the defendant had a training policy that amounts to
 20 "deliberate indifference" to the constitutional rights of the persons' with whom its
 21 officers are likely to come into contact; and (3) his constitutional injury would
 22 have been avoided had the defendant properly trained those officers. Blankenhorn
 23 v. City of Orange, 485 F.3d 463, 484 (9th Cir. 2007). With respect to the second
 24 prong, the plaintiff must allege "in light of the duties assigned to specific officers
 25 or employees the need for more or different training is so obvious, and the
 26 inadequacy so likely to result in the violation of constitutional rights, that the
 27 policymakers of the city can reasonably be said to have been deliberately
 28 indifferent to the need." City of Canton, Ohio v. Harris, 489 U.S. 378, 388-90, 109

1 S. Ct. 1197, 103 L. Ed. 2d 412 (1989).

2 Here, Claim Nine fails to state a claim against County for failure to train.
3 Plaintiff alleges County failed to train prison officials “as to proper procedures
4 when checking outgoing mail.” SAC at 30. As discussed above, Plaintiff fails to
5 allege a deprivation of any constitutional right and hence, has not alleged a
6 violation of his constitutional rights caused by the County’s alleged failure to train.
7 Plaintiff further fails to allege prison officials’ need for more or different training is
8 so obvious, in light of their duties, that County can reasonably said to have been
9 deliberately indifferent. See City of Canton, 489 U.S. at 388-90. Finally, Plaintiff
10 fails to allege his constitutional injury would have been avoided had County
11 properly trained prison officials regarding mail procedures. See id. Plaintiff’s
12 failure to train claim against County must therefore be dismissed.

13 **IV.**

14 **LEAVE TO FILE THIRD AMENDED COMPLAINT**

15 For the foregoing reasons, the SAC is subject to dismissal. However, as the
16 Court is unable to determine whether amendment would be futile, leave to amend
17 is granted. See Lucas v. Dep’t of Corr., 66 F.3d 245, 248 (9th Cir. 1995).

18 Accordingly, IT IS ORDERED THAT within twenty-one (21) days of the
19 service date of this Order:

20 1) Plaintiff may file a Third Amended Complaint (“TAC”) to attempt to
21 cure the deficiencies discussed above. **The Clerk of Court is directed to mail**
22 **Plaintiff a blank Central District civil rights complaint form to use for filing**
23 **the TAC, which the Court encourages Plaintiff to use.**

24 2) If Plaintiff chooses to file a TAC, Plaintiff must clearly designate on
25 the face of the document that it is the “Third Amended Complaint,” it must bear
26 the docket number assigned to this case, and it must be retyped or rewritten in its
27 entirety, preferably on the court-approved form. **Plaintiff shall not include new**
28 **defendants or new allegations that are not reasonably related to the claims**

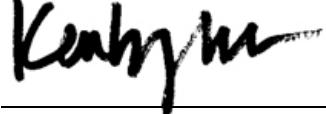
1 **asserted in the Complaint.** In addition, the TAC must be complete without
2 reference to the Complaint or any other pleading, attachment, or document.

3 An amended complaint supersedes the preceding complaint. Ferdik, 963
4 F.2d at 1260. After amendment, the Court will treat all preceding complaints as
5 nonexistent. Id. Because the Court grants Plaintiff leave to amend as to all his
6 claims raised here, any claim raised in a preceding complaint is waived if it is not
7 raised again in the TAC. Lacey v. Maricopa Cnty., 693 F.3d 896, 928 (9th Cir.
8 2012).

9 The Court advises Plaintiff that it generally will not be well-disposed toward
10 another dismissal with leave to amend if Plaintiff files a TAC that continues to
11 include claims on which relief cannot be granted. “[A] district court’s discretion
12 over amendments is especially broad ‘where the court has already given a plaintiff
13 one or more opportunities to amend his complaint.’” Ismail v. County of Orange,
14 917 F. Supp.2d 1060, 1066 (C.D. Cal. 2012) (citations omitted); see also Ferdik,
15 963 F.2d at 1261. Thus, if Plaintiff files a TAC with claims on which relief cannot
16 be granted, the Court may recommend dismissal of the TAC without leave to
17 amend and with prejudice.

18 **The Court cautions Plaintiff that his failure to timely comply with this
19 Order may result in dismissal of this action for failure to prosecute and
20 comply with court orders.**

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24 DATED: November 24, 2015



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28 HONORABLE KENLY KIYA KATO
UNITED STATES MAGISTRATE JUDGE